

RECEIVED
CENTRAL FAX CENTER

JUL 25 2005

**DYKAS,
SHAVER &
NIPPER, LLP**1403 W. Franklin Street
P.O. Box 877
Boise, Idaho 83701Tele: 208-345-1122
Fax: 208-345-8370

Confidential and privileged.

Destroy if received in error.

Unauthorized use or disclosure is
prohibited.**To: U.S. Patent & Trademark Office****Fax Number: (571) 273-8300****From: Suezann H. Yorita****Date: July 25, 2005****Pages: 15**
(including cover)**RECEIVED**
OIPE/IAP

JUL 26 2005

NOTES: _____

BEST AVAILABLE COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: MICHAEL MITROVICH

Application No.: 10/812,666

Filed: 03/29/2004

Title: STICK LUBRICANT AND
APPLICATOR

Group/Art Unit: 3682

Examiner:

Attorney Docket No: MITM103

RECEIVED
CENTRAL FAX CENTER

JUL 25 2005

STATEMENT UNDER 37 CFR 1.8(b)(3)

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

I am a legal secretary for the firm of Dykas, Shaver & Nipper, LLP.

Upon personal knowledge, I can attest to the timely mailing of the Request for Reconsideration and the accompanying documents.

1. On May 18, 2005, I signed the Certificate of Mailing for the Request for Reconsideration and mailed the Request that same day.

2. Included is a copy of the Certificate of Mailing and the accompanying documents which were mailed to the United States Patent and Trademark Office on May 18, 2005.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that

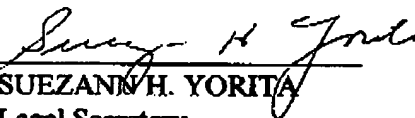
STATEMENT UNDER 37 CFR 1.8(b)(3) PAGE - 1

Serial # 10/812,666

the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

DATED this 25th day of July, 2005.

Very respectfully,



SUEZANNE H. YORITA
Legal Secretary

STATEMENT UNDER 37 CFR 1.8(b)(3) PAGE - 2

DYKAS, SHAVER & NIPPER, LLP

PATENT ♦ TRADEMARK ♦ COPYRIGHT ♦ INTERNATIONAL

FRANK J. DYKAS
Registered Patent Attorney
frank@dykaslaw.com

ROBERT L. SHAVER
Registered Patent Attorney
shaver@dykaslaw.com

STEPHEN M. NIPPER
Registered Patent Attorney
stephen@dykaslaw.com

DEREK H. MAUGHAN
Registered Patent Attorney
maughan@dykaslaw.com

June 2, 2005

Randolph A. Reese
Technology Center 3600
U.S. Patent & Trademark Office
PO Box 1450
Alexandria, VA 22313-1450

Re: Applicant: Michael J. Mitrovich
STICK LUBRICANT AND APPLICATOR
Serial No. 10/812,666
Attorney Docket No.: MITM103

COPY

Dear Mr. Reese:

On May 18, 2005, we submitted a Request for Reconsideration of Petition. Included with this Request for Reconsideration were the Supplemental Declaration in Support of Petition to Make Application Special, Petition for Extension of Time (2 months), along with a check in the amount of \$255.00 for this fee and the requested copy of the Decision on Petition to Make Special (Infringement & Energy).

As noted on Page 2 of the Decision on Petition to Make Special, "...Applicant should promptly submit a renewed petition to the Commissioner for Patents and Trademarks, Washington, D.C. 20231. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600." We submitted the items referenced above to this address and it was returned to us. (Please see copy of enclosed envelope).

Due to the return of the envelope we are now in the 3 month extension time period. Because the envelope was addressed per the instructions on the Decision on Petition to Make Special, we respectfully request that the request for Reconsideration of Petition be accepted and that the 2 month extension fee also be accepted.

If you have any questions or concerns, please contact me.

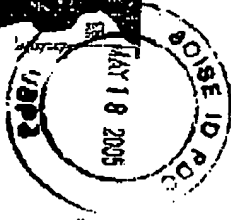
Best regards,

STEPHEN M. NIPPER
Registered Patent Attorney

SMN/shy

1403 W. Franklin Street ♦ Boise, Idaho 83702
P.O. Box 877 ♦ Boise, Idaho 83701-0877
(208) 345-1122 ♦ FAX (208) 345-8370 ♦ toll free (877) 611-1122
Visit us online at: www.dykaslaw.com

BEST AVAILABLE COPY



Commissioner of Patents and Trademarks
Attn: Technology Center 3666
Washington, D.C. 20230-18-9998

Dykas, Shaver & Nippel, LLP
P.O. Box 877
Boise, ID 83701-0877

TRANSMITTAL LETTER
(General - Patent Pending)Docket No.
MITM103In Re Application Of: **MICHAEL J. MITROVICH**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/812,666	03/29/2004		21,658	3662	3579

Title: **STICK LUBRICANT AND APPLICATOR****RECEIVED**
CENTRAL FAX CENTER**JUL 25 2005**COMMISSIONER FOR PATENTS:

Transmitted herewith is:

REQUEST FOR RECONSIDERATION
SUPPLEMENTAL DECLARATION IN SUPPORT OF PETITION TO MAKE APPLICATION SPECIAL
PETITION FOR EXTENSION OF TIME (2 MONTHS)
COPY OF DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT & ENERGY)
RETURN RECEIPT POST CARD

in the above identified application.

- ☐ No additional fee is required.
- ☒ A check in the amount of **\$ 225.00** is attached.
- ☐ The Director is hereby authorized to charge and credit Deposit Account No. as described below.
- ☐ Charge the amount of
- ☐ Credit any overpayment.
- ☐ Charge any additional fee required.
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.



Signature

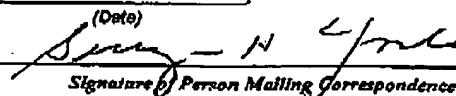
Dated: **MAY 18, 2005**

STEPHEN M. NIPPER
DYKAS, SHAVER & NIPPER, LLP
PO BOX 877
BOISE, ID 83701-0877
(208) 345-1122
REG. NO. 46,260

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

MAY 18, 2005

(Date)



Signature of Person Mailing Correspondence

SUEZANN H. YORITA

Typed or Printed Name of Person Mailing Correspondence

cc: **CLIENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

MICHAEL J. MITROVICH

Serial No.: 10/812,666

Filed: 03/29/2004

Group Art Unit: 3682

Title: STICK LUBRICANT AND
APPLICATOR

Confirmation No.: 3579

Attorney Docket No.: MITM103

**REQUEST FOR RECONSIDERATION OF
PETITION UNDER 37 CFR 1.102 (c) and 37 CFR §1.102(d)**

Mailed: January 26, 2005

**RECEIVED
CENTRAL FAX CENTER**

To: Commissioner of Patents and Trademarks
Attn: Technology Center 3600
Washington, D.C. 20231

JUL 25 2005

Dear Commissioner:

On November 11, 2004, Applicant petitioned to make special (infringement and energy) the above identified application.

On January 26, 2005, the Office released "decision on Petition to Make Special (infringement and energy)," dismissing both grounds on the Petition to Make Special.

Applicant hereby requests reconsideration of the dismissal of the Petition to Make Special under 37 CFR §1.102(d), MPEP 708.02, Section II: Infringement. Supplementing this Request for Reconsideration is a Supplemental Declaration in Support of Petition to Make Application Special signed by the inventor (enclosed).

REQUEST FOR RECONSIDERATION - 1

Serial #: 10/812,666
Filing Date: March 29, 2004
Attorney Docket No.: MITM103

A Petition for Extension of Time is enclosed and fee, as well as a copy of the original Decision on Petition to Make Special.

If the Office has any questions about this, or needs any additional information, please feel free to contact the undersigned at the number listed below.

Dated this 18th day of May 2005.

Very respectfully,



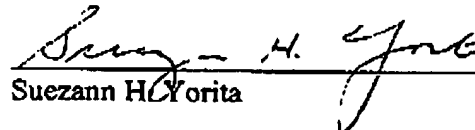
STEPHEN M. NIPPER
Reg. No. 46,260
(208) 345-1122

CERTIFICATE OF MAILING

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Commissioner of Patents and Trademarks
Attn: Technology Center 3600
Washington, D.C. 20231

DATE: May 18, 2005



Suezann H. Yorita

REQUEST FOR RECONSIDERATION - 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Group Art Unit: 3682
)	
MICHAEL J. MITROVICH)	Attorney Docket No.: MITM103
)	
Serial No.: 10/812,666)	Title: STICK LUBRICANT AND APPLICATOR
)	
Filed: 03/29/2004)	
)	

**SUPPLEMENTAL DECLARATION IN SUPPORT OF PETITION
TO MAKE APPLICATION SPECIAL**

In supplement to my earlier filed Declaration in support of the accompanying Petition to Make Special, I, Michael J. Mitrovich, declare and say:

1. I am the Applicant in the above-referenced patent application;
2. The subject matter of the above-referenced application is currently being made, used, and/or sold by at least one third party without my permission. This is an infringement of my Patent Application;
3. I have personally made a rigid comparison of the alleged infringing device with the claims of the above Application. It is my opinion that some of the claims are infringed;
4. I have caused to be made a careful and thorough search of the prior art and I have good knowledge of the prior art;
5. Expedited examination of the above Application is necessary to protect my rights;
6. The pertinent prior art or most closely related subject matter known to Applicant are:
Evans (151,108), Brinkerhoff (282,837), Ridsdale (517,300), Emery (827,518), Giles (849,784), Conniff (990,034), Conniff (1,010,237), Meek (1,010,935), Dawson (990,637), Faul (1,097,921), Eichelberger (1,438,026), Strughold et al. (2,589,582), Allen (3,027,974), Takimoto (3,896,903), Pastusck (4,381,824), Dombroski et al. (4,711,320), Dial (4,915,195), Aracil (5,054,582),

**SUPPLEMENTAL DECLARATION
IN SUPPORT OF PETITION
TO MAKE APPLICATION SPECIAL
Page 1 of 2**

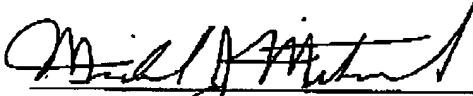
Szatkowski et al. (5,251,724), Ross et al. (5,305,853), Burke (5,337,860), Szatkowski et al. (5,358,072), Houser, Jr. et al. (5,518,085), Jamison (6,182,793), and Chalmers (2002/0020793).

7. These references were submitted to the USPTO as an IDS on March 7, 2005.

8. I further declare that all statements made herein of my own knowledge are true and all statements made upon information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made, are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the Application and any patent issuing therefrom;

Further, Declarant sayeth naught.

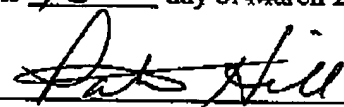
DATED this 13 day of ^{MAY}~~March~~ 2005.


Michael J. Mitrovich

SUBSCRIBED AND SWORN to before me this 13th day of ^{May}~~March~~ 2005.



(SEAL)


Notary Public for Washington
Residing at: Kenmore, WA
My Commission Expires: 4-28-07

SUPPLEMENTAL DECLARATION
IN SUPPORT OF PETITION
TO MAKE APPLICATION SPECIAL
Page 2 of 2



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Stephen M. Nipper
DYKAS, SHAVER & NIPPER, LLP
P O Box 877
Boise, ID 83701-0877

MAILED
FROM DIRECTORS OFFICE

JAN 26 2005

TECHNOLOGY CENTER 3600

In re Application of:
Michael J. Mitrovich
Serial No. 10/812,666
Filed: March 29, 2004
For: STICK LUBRICANT AND
APPLICATOR

DECISION ON PETITION
TO MAKE SPECIAL
(INFRINGEMENT &
ENERGY)

CALENDAR
DUE 3/26/05
BY 880

This is a decision on the petition filed November 11, 2004 under 37 CFR 1.102 (c) and 37 C.F.R. §1.102(d) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section II: Infringement and VI: Energy.

A grantable petition to make an application special under 37 C.F.R. 1.102 (c), MPEP 708.02, Section VI for an invention which materially contributes to (A) the discovery or development of energy resources, or (B) the more efficient utilization and conservation of energy resources must be accompanied by statements under 37 CFR 1.102 by applicant or his attorney explaining how the invention materially contributes to category (A) or (B) set forth above.

The petition states that the present invention conserves energy in that it reduces rail car friction thereby increasing fuel efficiency of the railroad industry. However, applicant has not provided any facts in support of this statement. The petition should include an explanation describing the features and/or uses of the claimed invention which result in the conservation of energy. Additionally, the petition itself should provide all the facts necessary to render a decision. For example, it is unclear what is meant or encompassed by "reduced rail car friction" or "increasing fuel efficiency". The statement is inadequate to establish for the record the discovery or development of energy resources, or more efficient utilization and conservation of energy resources.

For the above stated reasons, the petition to make special under 37 C.F.R. 1.102 (c), MPEP 708.02, Section VI: Energy is **DISMISSED**.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(h); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market or method in use; (B) that a rigid comparison of the

alleged infringing device, product or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.


The petition lacks requirement 2(C) above. While applicant states that he has made a thorough search of the prior art and has good knowledge of the pertinent prior art no copies or list of the art has been provided. Applicant should provide a listing of the pertinent prior art or most closely related subject matter. If pertinent prior art or the most closely related subject matter is provided such is a sufficient showing for the petition process. However, for examination purposes applicant should provide the pertinent prior art in an IDS.

In view of these deficiencies, the petition to make under 37 C.F.R §1.102(d), MPEP 708.02, Section II: Infringement is **DISMISSED**.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Should petitioner desire reconsideration, he should supplement this petition by a declaration or statement giving the information as outlined above. [Applicant should promptly submit a renewed petition to the

Commissioner of Patents and Trademarks, Washington, D.C. 20231. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.


Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/jwk 1/24/05

**PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)
(Small Entity)**Docket No.
MITM103In Re Application Of: **MICHAEL J. MITROVICH**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/812,666	03/29/2004		21,658	3662	3579

Invention: **STICK LUBRICANT AND APPLICATOR****COMMISSIONER FOR PATENTS:**

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of 01/26/2005 in the above-identified application.
Date

The requested extension is as follows (check time period desired):

☐ One month ☒ Two months ☐ Three months ☐ Four months ☐ Five months

from: 03/26/05 until: 05/26/05
Date *Date*

☒ Applicant claims small entity status. See 37 CFR 1.27

The fee for the extension of time is \$225 and is to be paid as follows:

- ☒ A check in the amount of the fee is enclosed.
☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No.
☐ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No.
☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

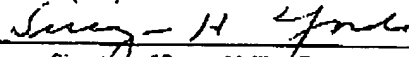

Signature

Dated: MAY 18, 2005

STEPHEN M. NIPPER
DYKAS, SHAVER & NIPPER, LLP
PO BOX 877
BOISE, ID 83701-0877
(208) 345-1122
REG. NO. 46,260

I certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" (37 CFR 1.8(a)) on
MAY 18, 2005

(Date)

*Signature of Person Mailing Correspondence*

SUEZANN H. YORITA

Typed or Printed Name of Person Mailing Correspondence

cc: CLIENT

Request for Reconsideration, Supplemental Declaration in
Support of Petition to Make Special, Petition for Extension
of Time (3 months), Copy of Decision on Petition to Make
Special (Infringement & Energy), Check in the Amount of
\$ 255.00 General Transmittal with Certificate of Mailing by
First Class Mail

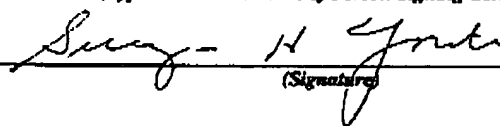
Applicant: MITROVICH

Title: STICK LUBRICANT AND APPLICATOR

Our File: MITM103

Serial No.: 10/812,666

Date: May 18, 2005

CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8) Applicant(s): MICHAEL MITROVICH		Docket No. MITM103	
Application No. 10/812,666	Filing Date 03/29/2004	Examiner	Group Art Unit 3682
Invention: STICK LUBRICANT AND APPLICATOR			
<p> I hereby certify that this <u>STATEMENT UNDER 37 CFR 1.8(b)(3) AND ACCOMPANYING DOCUMENTS</u> <i>(Identify type of correspondence)</i> is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. <u>(571) 273-8300</u>) on <u>JULY 25, 2005</u> <i>(Date)</i> </p> <div style="text-align: right; margin-top: 100px;"> <u>SUEZANN H. YORITA</u> <i>(Typed or Printed Name of Person Signing Certificate)</i>  <i>(Signature)</i> </div>			
<p>Note: Each paper must have its own certificate of mailing.</p>			

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ **BLACK BORDERS**
- ☐ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☐ **FADED TEXT OR DRAWING**
- ☐ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☒ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☐ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☐ **OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.